

REMARKS

Preliminary Matter

The Office Action indicates at items 4 and 6 on the *Office Action Summary* page that claims 1-42 are pending in the application and that claims 1-42 are rejected. Claims 1-21, however, have been canceled in the Preliminary Amendment filed March 29, 2006. Applicants respectfully request a corrected identification of the claims in next Office communication.

Claim Amendments

Claims 22-42 are pending and under current examination. Applicants have amended claim 42 solely to overcome the 35 U.S.C. § 101 rejection. Support for the amendments to claim 42 can be found in the specification at, for example, p. 5, line 26 to p. 6, line 2. No new matter has been introduced.

Office Action

In the Office Action, the Examiner took the following actions:

- (a) rejected claim 42 under 35 U.S.C. § 101;
- (b) rejected claims 22, 23, 26, 27, and 35-42 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,578,005 B1 ("Lesaint");
- (c) rejected claims 24 and 25 under 35 U.S.C. § 103(a) as being unpatentable over Lesaint in view of U.S. Patent No. 6,389,400 B1 ("Bushey"); and
- (d) rejected claims 28-34 under 35 U.S.C. § 103(a) as being unpatentable over Lesaint in view of U.S. Patent No. 6,275,812 B1 ("Haq").

Rejection of Claim 42 under 35 U.S.C. § 101

The Office Action rejected claim 42 under 35 U.S.C. § 101, because it is allegedly directed to "software, [which] do[es] not fall under one of the four statutory categories of inventions, as described in 35 USC 101." Office Action, p. 2. Without conceding to the Office's

allegation, Applicants have amended claim 42 to recite “[a] non-transitory computer readable storage medium” Applicants therefore respectfully request withdrawal of the rejection.

Rejection of Claims 22, 23, 26, 27, and 35-42 under 35 U.S.C. § 102(e)

Applicants respectfully traverse the rejection of claims 22, 23, 26, 27, and 35-42 under 35 U.S.C. § 102(e) as being anticipated by Lesaint. In order to establish anticipation under 35 U.S.C. § 102, the Office Action must show that each and every feature as set forth in the claims alleged to be anticipated is found, either expressly or inherently described, in Lesaint. *See* M.P.E.P. § 2131. Lesaint, however, does not disclose each and every feature of at least Applicants’ independent claim 22.

Claim 22 recites “[a] method of tuning a scheduling process for assigning tasks to resources of a workforce management system” (emphasis added). The method includes, among other things, “selectively modifying at least a predetermined subset of said scheduling parameters data” (emphases added).

Lesaint does not disclose or suggest at least the above-quoted feature recited in claim 22. In contrast, Lesaint discloses a “method and apparatus for resource allocation when schedule changes are incorporated in real time.” Lesaint, Title. Lesaint discloses that “[a]n initial series of schedules is first generated allocating resources to the tasks, and then modifying the individual schedule of at least one resource in response to updated information.” Lesaint, Abstract.

The Office Action alleges that Lesaint discloses, at col. 3, lines 24-28, “selectively modifying at least a predetermined subset of said scheduling parameters data,” as recited in claim 22. *See* Office Action, p. 3. This is incorrect. Lesaint instead discloses, at col. 3, lines 15-27,

providing initial information relating to the tasks . . . , generating,
for each resource, an initial schedule . . . , providing updated

information relating to the tasks and resources, and modifying the initial schedule of at least a first resource in response to such updated information, whereby changes to individual schedules may be made in response to such updated information independently of the process of generating the initial schedules.

In contrast to the Office Action's allegations, Lesaint's "modifying the initial schedule" is not "selectively modifying at least a predetermined subset of said scheduling parameters data," as recited in claim 22 (emphases added). Assuming solely for the sake of argument that Lesaint's initial schedule may be analogous to the "work plan" recited in claim 22, which is generated as a function of the predetermined scheduling parameters, modifying (initial) schedules, as disclosed by Lesaint, is still different from "selectively modifying . . . scheduling parameters data," as recited in claim 22.

Therefore, Lesaint does not anticipate independent claim 22. Accordingly, independent claim 22 should be allowable over Lesaint. Although of different scope, independent claim 40 recites features similar to those discussed above with respect to claim 22. Therefore, claim 40 should also be allowable over Lesaint. In addition, dependent claims 23, 26, 27, and 35-39, 41, and 42 should be allowable at least by virtue of their dependence from base claim 22 or 40, and because they recite additional features not disclosed by Lesaint. Applicants therefore respectfully request withdrawal of the rejection.

Remaining Rejections of Claims 24, 25, and 28-34 under 35 U.S.C. § 103(a)

Applicants respectfully traverse the remaining rejections of claims 24, 25, and 28-34 under 35 U.S.C. § 103(a) as being unpatentable over Lesaint in view of Bushey or Haq.

The Office Action has not properly resolved the *Graham* factual inquiries, the proper resolution of which is the requirement for establishing a framework for an objective obviousness analysis. See M.P.E.P. § 2141(II), citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ

459 (1966), as reiterated by the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007).

In particular, the Office Action has not properly determined the scope and content of the prior art. Specifically, Lesaint, Bushey, and Haq, taken alone or in any combination, do not teach or suggest what the Office Action attributes to them. In addition, the Office Action has not properly ascertained the differences between the claimed invention and the prior art, at least because the Office Action has not properly interpreted the prior art and considered both the invention and the prior art as a whole. See M.P.E.P. § 2141(II)(B).

As discussed above, Lesaint does not teach or suggest each and every feature of independent claim 22. Bushey does not cure the deficiencies of Lesaint. Bushey discloses “[s]ystem and methods for intelligent routing of requests from customers to agents where a request is received at a service center from a customer.” Bushey, Abstract. Bushey, however, does not teach or suggest “selectively modifying at least a predetermined subset of said scheduling parameters data,” as recited in claim 22 (emphases added). Therefore, Bushey does not cure the deficiencies of Lesaint.

Likewise, Haq does not cure the deficiencies of Lesaint. Haq discloses an “intelligent system for dynamic resource management.” Haq, Title. Haq, however, does not teach or suggest “selectively modifying at least a predetermined subset of said scheduling parameters data,” as recited in claim 22 (emphases added). Therefore, Haq does not cure the deficiencies of Lesaint.

Lesaint, Bushey, and Haq, whether taken alone or in any combination, do not teach or suggest each and every feature of independent claim 22. Accordingly, claim 22 is nonobvious over the cited references, and should be allowable. In addition, dependent claims 24, 25, and

28-34 should be allowable over the cited references at least by virtue of their dependence from base claim 22, and because they recite additional features not taught or suggested by the cited references. Applicants therefore respectfully request withdrawal of the § 103(a) rejections.

Conclusion

Pending claims 22-42 are in condition for allowance, and Applicants request a favorable action.

The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account no. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 7, 2011

By: 

David M. Longo
Reg. No. 53,235

/direct telephone: (571) 203-2763/